IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10763 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDUL MUSABHAI SETA

Versus

CHIEF OFFICER

Appearance:

1. Special Civil Application No. 10763 of 2002

MR KISHOR M PAUL for Petitioner No. 1

MR RR TRIVEDI for Respondent No. 1-2

MR BHAVESH P TRIVEDI for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 11/02/2004

ORAL JUDGEMENT

Rule. Learned advocate, Mr. Trivedi, waives service of notice of Rule for the respondents.

2. In peculiar facts and circumstances of the case, the contentions are finally set at rest.

3. The petitioner was working with Keshod Nagarpalika. It is not in dispute that a chargesheet was issued on 15th March 2002 (Annexure D). The petitioner submitted his reply on April 3, 2002 (Annexure E), and the respondents without holding any departmental proceedings passed order (Annexure F) on 29th April 2002 dismissing him from service. The petitioner has, therefore, approached this Court with this petition seeking following reliefs;

(A) Your Lordships may be pleased to admit this petition;

(B) Your Lordships may be pleased to issue writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction by quashing and setting aside the order passed by the Respondents at Annexure "F" to the petition;

(C) That this Honourable Court may be pleased to, pass such other and further order as the nature and circumstances of the case may require.

4. Heard the learned advocates, Mr. Paul and Mr. Trivedi.

5. Mr. Trivedi was at loss to support the impugned order - Annexure 'F'. There is total absense of any departmental proceeding before passing the order of dismissal. Under the circumstances, there is violation of principles of natural justice and the petition deserves to be allowed on this count alone.

6. The petitioner was suspended prior to dismissal and he had approached Civil Court to challenge that order. No stay was granted by the Civil Court and the matter is pending before it. In this petition, the petitioner has not challenged the suspension part also and, therefore, no observations, are made in this regard. This order may not be treated as an order of reinstatement of the petitioner in service.

7. The petition is allowed. The order impugned herein - Annexure "F" is hereby quashed and set aside and it would be open for the respondents to hold inquiry on

basis of the chargesheet served on the petitioner, to which the petitioner has replied. Rule is made absolute accordingly. No costs.

[A.L. Dave, J.]

rmr.